

*Original
Recd Copy Feb-12th/1880
No. 6079*

*J. L. Bates
Atty for Appellant*

IN THE
SUPREME COURT
OF THE
State of California.

M. Z. CHAMBERLIN,

Respondent,

vs.

PACIFIC WOOL GROWING CO.,

Appellant.

Additional Points and Authorities.

The appellant borrowed and used the money, viz: \$850. (Testimony of Sackett, Trans., bottom of page 9, and page 11.)

Common principles of justice would require a corporation to pay for property actually received, appropriated, and expended. When such a contract is once executed, it would appear consonant with principles of justice and equity to sustain the contract, where the corporation has received the consideration, though executed on the

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J. W. Gross Clerk
By J. B. Martin Deputy Clerk*

part of the corporation in excess of authority of either the agent executing the same or the corporation.

In such cases neither party can avoid the contract, though *ultra vires*.

Field on Cor., sections 265 and 266.

Argenti vs. San Francisco, 16 Cal. 266.

Pixley vs. W. P. R. R. Co., 33 Cal. 191.

Sackett settled his account with the corporation September 25, 1875, and \$550 of this money was used in payment of his salary. (Trans. folio 31, p. 11.)

The question of ratification is not necessary for a recovery against the corporation, because it had the money, used it, and are estopped from saying it does not owe it; but I do not abandon the ratification.

The bill of exceptions does not state that it contains all the testimony. *Non constat* there was other evidence before the lower Court on the subject of loan, and that it was sufficiently proved by other evidence than that of Sackett. Every presumption is in favor of the judgment of the lower Court.

People vs. Quincy, 8 Cal. 89.

Hastings vs. Cunningham, 35 Cal. 549.

E. D. SAWYER,

Attorney for Respondent.

Respondent's counsel at the conclusion of his oral argument asked leave to present some authorities on the *allegation* and *evidence* as to the alleged ratification by Board of Trustees of said loan (Trans. folios 6 and 33), to show that D. P. Sackett was *competent* to vote in a matter in which his lawful *duty* to the Company was to make expense as *low* as possible, but his individual *interest* to *saddle* the Company with a debt he had become personally responsible for and reaped benefit from the same himself.

"His interest here interfered with his duty," as stated by Chancellor Kent in *Davoue v. Fanning*, 2 John. Ch. R. 255, citing the maxim, "*Emptor emit minimo potest; venditor vendit quam maximo potest.*"

Respondent's counsel not being able to find any authorities, he repeats the matter contained in his oral argument, not perceiving the vast distinction intimated by Court on argument of a contract void for want of authority and one *illegal* or void, on ground of *public policy*.

Hill v. Kidd, 46 Cal. 616.

By reference to authorities cited in IV and V of appellant's Points and Authorities, it will be seen Courts have rigidly adhered to and not relaxed the rule we contend for.

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J. W. Myers Clerk
By J. W. Myers Deputy

Shamlain vs. P. W. B. Co. No 6099
Appellant's Reply

No 6079

Chamblain vs P. N. G. Co

Appellants Reply

Service accepted this 14th day of
February AD 1880

Jawyer & Ball
^{attys}
attys for Respondents